

**Statement of Jim Hughes
Deputy Director
Bureau of Land Management, U.S. Department of the Interior**

**Committee on Resources
Subcommittee on National Parks, Recreation, and Public Lands
U.S. House of Representatives**

**Oversight Hearing on Impact of Revised Statute 2477
St. George, Utah**

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R.S. 2477 states in its entirety: *"the right-of-way for the construction of highways over public lands, not reserved for public uses, is hereby granted."*

I appreciate the opportunity to present the views of the Department of the Interior at this morning's hearing on the impact of Revised Statute (R.S.) 2477. Addressing the issue of who owns roads across public lands--the Federal Government, the State, or the counties—has been a high priority for the Department. Last year, the Secretary of the Interior signed, and the BLM implemented, an agreement with the state of Utah that Rebecca Watson, Assistant Secretary for Land and Minerals Management, characterized as “a reasonable approach that will allow us to clarify ownership of some county roads in Utah.”

Background

R.S. 2477 was enacted as part of the Mining Law of 1866, during a time when the Federal Government was aggressively promoting settlement and development of the West. Under the authority of R.S. 2477, thousands of miles of public highways were established across the public domain. R.S. 2477 was the primary authority under which many existing state and county highways were constructed and operated over Federal lands in the western United States. It did not require those who constructed a highway to notify the Federal Government and obtain a deed or right-of-way for the land, because the roads conveyed as a matter of law when certain conditions were met.

Grandfathered Rights

In 1976, Congress enacted the Federal Land Policy and Management Act (FLPMA), which declared that it was the policy of the United States to retain public lands in Federal ownership unless disposal “will serve the national interest” [(Sec. 102(1)]. In Title V of FLPMA, Congress set out procedures under which the BLM would authorize rights-of-way across public lands for, among other uses, roads, trails, highways, and livestock driveways. Sec. 706 of FLPMA repealed R.S. 2477. However, rights established prior to repeal remained valid.

Proving that such a right was established prior to the repeal of R.S. 2477, however, requires establishing that a highway was constructed on unreserved Federal land prior to 1976.

Unrecorded rights-of-way, however, have made it difficult for Federal land managers, State, local, and tribal governments, and public land users to know which right-of-way claims are valid and where they are located. This uncertainty creates conflict and hampers the BLM's ability to manage public lands under FLPMA as well as the ability of states and counties to manage their transportation infrastructure.

Congressional Action

Both Congress and the Department of the Interior have made several attempts to resolve the uncertainties posed by potential R.S. 2477 claims. In 1994, the Department issued proposed regulations setting out a process for validating R.S. 2477 claims. The proposed regulations were controversial, and, in response, Congress enacted a moratorium blocking the Department from issuing any new regulations on R.S. 2477 unless authorized by Congress:

no final rule or regulation of any agency of the Federal Government pertaining to the recognition, management or validity of a right-of-way pursuant to R.S. 2477 shall take effect unless expressly authorized by an Act of Congress subsequent to the date of enactment of this Act. Sec. 108, FY 1997 Interior Appropriations Act [(P.L.104-208 (1996)].

While no court has ruled on the duration of this moratorium, the Comptroller General determined that Sec. 108 of P.L.104-208 is permanent law.

Disclaimer of Interest Regulations

Section 315 of FLPMA authorizes the Secretary of the Interior to issue a document--a "recordable disclaimer of interest"--to help remove a cloud on the title to a particular property if the Secretary determines that the United States has no interest in the property. This is an administrative procedure available for landowners to use to remove a cloud on the title to their lands. It was created by Congress to offer landowners or other claimants an alternative to going to court to clear title or seeking private relief legislation. On January 6, 2003, the BLM issued technical amendments to its 1984 disclaimer of interest regulations that conform the regulations more closely to the 1986 amendments to the Quiet Title Act (28 USC 2409a). The new regulations remove the 12-year regulatory filing deadline for states and local governments, allow any entity claiming title, not just current owners of record, to apply for a disclaimer of interest, and clarify how BLM will work with other Federal land management agencies on applications for disclaimers of interest. The rule applies to all lands in which the United States may have an interest.

Memorandum of Understanding

On April 9, 2003, the Interior Department and the state of Utah signed an agreement [Memorandum of Understanding (MOU)], establishing a process to resolve disputed R.S. 2477 rights-of-way in Utah. Under the MOU, the BLM will process applications for acknowledgment of R.S. 2477 rights-of-way using its recordable disclaimer of interest regulations. The terms and process outlined in the MOU provide a mechanism to recognize and formally document state and county R.S. 2477 highway rights-of-way in Utah.

On June 25, 2003, the BLM Deputy Director issued guidance to the Utah State Director on how

applications for recordable disclaimers of interest pertaining to R.S. 2477 rights-of-way will be processed under the MOU. Included in the process are an application from the state, payment by the state of estimated processing costs, publication of a *Federal Register* notice of the application and opportunity for public comment, BLM review of supporting documentation and comments, and a final decision by BLM to approve or reject the application.

On January 14, 2004, the State of Utah submitted its first application under the MOU for “Weiss Highway,” in Juab County. The *Federal Register* notice was published on February 9, 2004, and an extended comment period ended on May 8, 2004. The application is currently being reviewed by the BLM-Utah under the process set out in the MOU.

Thank you again for the opportunity to participate in this hearing. I would be pleased to answer any questions.